

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Pacific Gas and Electric Company (U 39-E), for approval of the 2006 – 2008 Energy Efficiency Programs and Budget.

Application 05-06-004  
(Filed June 1, 2005)

Southern California Gas Company (U 904-G), for approval of Natural Gas Energy Efficiency Programs and Budgets for Years 2006 through 2008.

Application 05-06-011  
(Filed June 1, 2005)

Southern California Edison Company (U 338-E), for approval of its 2006 – 2008 Energy Efficiency Program Plans and associated Public Goods Charge and Procurement Funding Requests.

Application 05-06-015  
(Filed June 2, 2005)

San Diego Gas & Electric Company (U 902-E), for approval of Electric and Natural Gas Energy Efficiency Programs and Budgets for Years 2006 through 2008.

Application 05-06-016  
(Filed June 2, 2005)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO THE CENTER FOR SMALL BUSINESS AND THE ENVIRONMENT****I. Summary**

This decision awards the Center for Small Business and the Environment (CSBE) \$37,210.71 in compensation for its substantial contribution to Decision

(D.) 05-09-043. This award is approximately one-third of the amount requested, based on the disallowances described herein.

## **II. Background**

This consolidated proceeding was initiated to examine portfolio plans and budgets for energy efficiency activities planned during the 2006-2008 program cycle. The Commission directed Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company and Southern California Gas Company (collectively, the utilities) to file their proposals on June 1, 2005 for Commission consideration, together with the assessments provided to them by their program advisory groups (PAGs). By D.05-09-043, the Commission adopted 2006-2008 funding levels and portfolio plans, subject to a compliance phase currently underway.

CSBE filed its request for an award of compensation (Request) for its contributions to this decision, as well as for work on related issues in Rulemaking 01-08-028, the Commission's generic energy efficiency proceeding. No party opposes CSBE's request.

## **III. Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Public Utilities Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The intervenor’s claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

**IV. Procedural Issues**

The prehearing conference in this proceeding was held on June 22, 2005. CSBE sent an e-mail to the Commission's Public Advisor, and to assigned Administrative Law Judge (ALJ) Gottstein on or about July 22, 2005 (the due date for NOI in this proceeding) regarding the requirements to late-file an NOI. By return e-mail dated July 25, 2005, the assigned ALJ advised CSBE that its late-filed NOI would be accepted if filed within that same week. CSBE filed its NOI July 29, 2005, within that period. On November 10, 2005, assigned ALJ Gottstein ruled to accept the NOI as timely, and that CSBE is a customer pursuant to § 1802(b)(1)(B). She also ruled that CSBE met the significant financial hardship condition through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because CSBE met this requirement in another proceeding within one year of the commencement of this proceeding. (ALJ Ruling dated November 12, 2004 in Rulemaking (R.) 01-08-028). CSBE filed its Request on November 23, 2005, within 60 days of D.05-09-043 being issued.

We find that CSBE has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

**V. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i)

and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>1</sup>

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.<sup>2</sup> With this guidance in mind, we turn to the claimed contribution CSBE made in this proceeding.

#### **A. On-Bill Financing**

CSBE states that its participation in this proceeding, as well as the Commission's generic energy efficiency rulemaking, has resulted in the Commission adopting specific on-bill financing programs for energy efficiency in D.05-09-043. CSBE documents specific activities and milestones that it believes

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<sup>1</sup> D.98-04-059, 79 CPUC2d, 628 at 653.

<sup>2</sup> See D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

led to the Commission's endorsement of the concept and its final approval of the on-bill financing programs in California requested by the utilities in their filings for 2006-2008 portfolio plans. These include research activities into successful on-bill financing programs prior to its participation in Commission proceedings, the filing of comments addressing this program in R.01-08-028, presentations to representatives of California utilities in private meetings and other forums, and comments on the draft decision in R.01-08-028 on energy efficiency goals. CSBE also describes its participation as an interested party in the public PAG meetings during the months preceding the filing of the applications in this proceeding.<sup>3</sup>

#### **B. EM&V-Related Issues**

CSBE also requests compensation for its contribution to the Commission's determinations regarding specific evaluation, measurement and verification (EM&V) issues. In particular, CSBE states that its participation in R.01-08-028, and this proceeding, was directed at ensuring clear recognition of the size and scope of the problem with respect to the savings values of compact florescent lamps (CFLs), as well as ensuring that corrected values would be used in the program design planning process for 2006-2008.

CSBE points to its March 25, 2004 motion in R.01-08-028 (Motion), in which CSBE stated its contention that small businesses were paying for, but not receiving, the full value of public purpose funds expended for these installations because of the overstatement of savings from these measures. As further evidence of its early participation on this issue, CSBE also points to its participation in the EM&V advisory committee established to review the final

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<sup>3</sup> CSBE is not a PAG member.

EM&V report for the 2003 Express Efficiency program. CSBE contends that this early participation on CFL valuation issues substantially contributed to the 2006-2008 program designs approved by the Commission in D.05-09-043 because the utilities revised their calculations of future savings claims downward in response to the corrections in CFL measure savings values, and reduced the relative proportion of CFL-related programs as a result.

CSBE also states that it has flagged multiple situations during the course of this proceeding and R.01-08-028 where the utilities expressed interest in offering rebates to “free riders,” i.e., customers who would install energy efficiency measures on their own without aid or inspiration from utility programs. In CSBE’s view, its role in confronting utility managers with respect to this practice has directly contributed to the Commission’s efforts to accurately account for these free riders in the calculation of program savings.

Finally, CSBE states that its participation in this proceeding significantly contributed to the Commission’s determinations regarding the need to reevaluate the critical peak values in current avoided costs, and to better understand the factors contributing to deteriorating load factors.

### **C. Discussion**

We have carefully reviewed CSBE’s written filings in this proceeding, and the chronology of its participation in the public PAG meetings on the issue of on-bill financing. We agree with CSBE that its analysis of on-bill financing programs in those pleadings and discussions with PAG members and the utilities contributed significantly to the development of the utilities’ proposals and, in turn, our adoption in D.05-09-043.

With respect to the EM&V-related issues, we find no merit to CSBE’s claim that its discussions with utilities and others regarding utility rebate practices, or

intentions, contributed to our determinations in D.05-09-043. There was no discussion of this issue in the decision. However, CSBE's participation was directly related to the Commission's determinations in D.05-09-043 with respect to the need to further examine critical peak valuation and definitional issues. In particular, in its comments on the Case Management Statement in this proceeding, CSBE advocated strongly for a higher valuation of critical peak hours. Although not alone in this request, we believe that CSBE's unique perspective as a representative of small business complemented or contributed to the showings of other parties espousing this position. (See § 1802.5.)

We also determined in D.05-09-043 that the measure savings assumptions for CFLs contained in the utilities' applications should be updated using more recent study results, including the study that CSBE refers to in its Request.<sup>4</sup> Based on the record and the documentation presented in CSBE's Request, we believe that CSBE's participation in this proceeding significantly contributed to that determination.

In sum, we find that CSBE did make a significant contribution to D.05-09-043 on the issue of on-bill financing and specific EM&V-related issues. However, as discussed further below, we make substantial downward adjustments to CSBE's Request.<sup>5</sup>

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<sup>4</sup> D.05-09-043, mimeo, pp. 100-101.

<sup>5</sup> We note that the ALJ put CSBE on notice during the NOI stage that it may have an "unrealistic expectation of compensation" (§ 1804 (b)(2)) for its participation. See *ALJ's Ruling Regarding Notice of Intent to Claim Compensation* in R.01-08-028, dated November 12, 2004 (pp. 6-7) and *ALJ's Ruling Finding the Center for Small Business and the Environment Eligible to Claim Intervenor Compensation* in A.05-06-004 et al., at page 4. In both NOI filings, CSBE submitted an estimated budget of \$92,675.



## **VI. Reasonableness of Requested Compensation**

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable. CSBE requests \$31,058.43 for its participation from June 2 through September 16, 2005 in this proceeding, leading to the issuance of D.05-09-043.

In addition, CSBE appended a separate request for compensation in the amount of \$72,279.03 for earlier work it performed (from March 2004 through May 2005) on on-bill financing and EM&V issues in R.01-08-028. CSBE proposes its work be consolidated and requests a total of \$103,327.46 for its work in both proceedings. In CSBE's view, this earlier work in R.01-08-028 directly contributed to the development of the utility program plans filed on June 1, 2005, and in the Commission's determinations in D.05-09-043 that addressed those plans.

CSBE's request for compensation is summarized below:

### **For Contribution to R.01-08-028 and Work Prior to Utility Applications in A.05-06-004 et al.**

<b>Name</b>	<b>Type</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Requested Amount</b>
Hank Ryan	Policy Expert	175.00	324.50	\$56,787.50
		87.50	57.75	5,043.12*
Stephen Hall	Policy Expert	175.00	55.00	9,625.00
Expenses				813.41
Subtotal				\$72,269.03

\* Adjusted for computation error.

### **For Contribution to D.05-09-043 Post-Filing of A.05-06-004 et al.**

<b>Name</b>	<b>Type</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Requested Amount</b>
Hank Ryan	Policy Expert	\$175.00	86.25	\$15,093.75

		87.50	91.00	7,962.50
Stephen Hall	Policy Expert	175.00	44.00	7,700.00
Expenses				302.18
Subtotal				\$31,058.43
<b>Grand Total</b>				<b>\$103,327.46</b>

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

#### **A. Hours and Costs Associated with, Related to and Necessary for Substantial Contribution**

To assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable, we first determine to what degree the hours and costs are associated with the work performed, and if the hours and costs were related to and necessary for the substantial contribution.

CSBE separated its request into two time-periods, associated with each proceeding. The first period (pre-filing of utility applications) refers to work that CSBE claims contributed to the Commission's determinations in D.04-09-060, D.05-01-055 and D.05-04-051 in the generic energy efficiency rulemaking (R.01-08-028).<sup>6</sup> CSBE requests that the Commission consider these hours as "pre-filing" contributions to the determinations made on the utility's portfolio plans and budgets adopted in D.05-09-043 in this docket (A.05-06-004 et. al). The

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<sup>6</sup> This work is presented in Appendix E to CSBE's Request.

second period (post-filing) refers to hours CSBE worked on issues after the utilities filed their applications in this docket, i.e., after June 1, 2005.

As discussed further below, there is some precedent for the Commission to authorize hours for work by an intervenor that precedes the filing of a utility application if it is shown to significantly contribute to the Commission's determinations on those matters. However, CSBE is also requesting that we consider D.05-09-043 (in A.05-06-004 et al.) to be the final decision addressing the issues in our generic rulemaking (R.01-08-028) for the purpose of assessing its contributions to that rulemaking. This request mischaracterizes the relationship between the applications and the rulemaking. These are two separate proceedings that have not been consolidated by the Commission. Moreover, the scope and issues addressed in each are significantly different. In particular, R.01-08-028 is a proceeding to address various generic policy issues related to post-2005 energy efficiency issues including: (1) the savings goals for post-2005 portfolio plans over a 10-year horizon, (2) the administrative structure for post-2005 energy efficiency activities, (3) EM&V protocols for assessing the achievements of post-2005 energy efficiency, and (4) the policy rules to govern the selection, evaluation and implementation of those activities. For each of these generic topics (or phases), the assigned ALJ or Assigned Commissioner established by ruling the schedule and process for addressing the issues, and the Commission has issued a separate decision in each phase to resolve them.

In contrast, A.05-06-004 et al. are the applications initiated by the utility proposals for their specific 2006-2008 energy efficiency portfolio plans and fundings levels. While the energy efficiency goals, policy rules and other generic issues addressed by Commission decisions in R.01-08-028 established the requirements and schedule for the filing of these applications, it does not follow

that D.05-09-043 represents a “final determination/resolution of issues spread over more than one proceeding,” as CSBE asserts.<sup>7</sup> Therefore, in considering CSBE’s request, we clearly distinguish between the hours that we consider to be appropriate “pre-filing” contributions to the Commission’s determinations in D.05-09-043, and those that are improperly included in CSBE’s request because they relate to Commission decisions addressing issues raised and resolved in R.01-08-028.

In its request, CSBE presented a daily breakdown of the hours and expenses claimed for its policy experts/advocates, accompanied by a brief description of each activity. We discuss the claimed hours, by expert, below.

#### **A.1 Hours Claimed for Ryan**

For Ryan, CSBE designated each activity as either OBF (on-bill financing) or EM&V, but did not break down the hours further by specific EM&V issue. The OBF hours include work CSBE undertook to raise on-bill financing issues during the Commission’s consideration of energy efficiency savings goals and related implementation issues in R.01-08-028.<sup>8</sup> CSBE’s position in R.01-08-028 was that on-bill financing was critical to the ability of the utilities to meet the aggressive goals adopted by the Commission. CSBE recommended the Commission require in its decision on savings goals that the utilities offer such financing in their 2006-2008 energy efficiency portfolio plans. The final decision

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<sup>7</sup> CSBE Request, p. 2.

<sup>8</sup> For example, CSBE lists hours associated with the review of the ALJ draft decision on the energy efficiency savings goals in R.01-08-028, as well as many hours of informal meetings during the workshop process and formal comment period that led to that decision.

on these matters (D.04-09-060) did not adopt this requirement, but rather directed the utilities to further evaluate in their respective June 1, 2005 applications on-bill financing options by “looking to the practices used in other states to resolve the ratemaking, cost allocation and consumer protection issues raised by the parties in this proceeding.”<sup>9</sup>

We note that CSBE filed a separate NOI in R.01-08-028, stating that it intended to participate in the various phases of that proceeding and specifically intervening on the issue of on-bill financing, which it did. CSBE could have filed a compensation request in R.01-08-028 for its contribution to D.04-09-060 and the informal consultation and workshop process that led to that decision, even if its specific position on on-bill financing was not adopted. However, it did not do so.<sup>10</sup> Moreover, many of the hours listed by CSBE as contributing to the development of on-bill financing in R.01-08-028 during the period leading to the Commission’s determinations in D. 04-09-060 (and in the months that followed) appear to involve meetings/discussions with staff or decision makers in other

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<sup>9</sup> D.04-09-060, mimeo. p. 34.

<sup>10</sup> As discussed in the ALJ’s ruling dated November 12, 2004, CSBE was granted full party status in R.01-08-028 in September, 2004 and its NOI was accepted as late-filed (by many months) in light of CSBE’s relative inexperience participating in Commission proceedings.

During the process of reviewing CSBE’s NOI, CSBE received assistance from our Public Advisors Office and from the assigned ALJ concerning intervenor compensation procedures, and was advised to familiarize itself with those procedures for future intervenor compensation filings.

If it sought compensation for work that may have contributed to the Commission’s determinations in that rulemaking, CSBE should have filed its request for compensation in R.01-08-028, and not in this application docket.

state agencies or the Governor's office. We fail to see how these activities represent a substantial contribution to a Commission decision, as required under the intervenor compensation statute. Accordingly, we do not authorize compensation for any of the OBF hours during 2004 that CSBE lists in Appendix E of its request, nor do we authorize compensation for a number of hours listed for work on Building Operator Certification (including phone discussions with Southern California Gas Company on this topic), which CSBE includes in its timesheets without any explanation as to the relationship between this topic and on-bill financing or the Commission's final determinations in D.05-09-043.

CSBE also documents the pre-filing hours it spent involved in meetings/discussions with the utilities, Commission staff and other members of the PAGs regarding on-bill financing program design issues. This work occurred during the planning stage for these applications, when the PAG members, program administrators, implementers and other interested parties were encouraged by the Commission to work collaboratively on program design issues to maximize the effectiveness of the portfolio plans in meeting Commission savings goals and other policy objectives. In our view, CSBE's particular expertise in on-bill financing and involvement in these meetings/discussions directly facilitated the development of the on-bill financing programs that were proposed by the utilities, and ultimately adopted by the Commission in D.05-09-043. This facilitation includes CSBE's work to document how on-bill financing would support and enhance the "green building initiatives" included in the utilities' portfolio plans. We also find that the GBI information-gathering effort conducted in R.01-08-028, in which CSBE actively participated formally and informally from the unique perspective of small

business financing needs, fed directly into the planning process for the portfolio plans adopted in that decision.<sup>11</sup>

As we noted in D.05-05-046, there is limited precedent for the Commission to award compensation for an intervenor's work preceding the opening of a Commission proceeding to which the work ultimately contributed.<sup>12</sup>

Nonetheless, in that decision we determined that the pre-filing meetings and discussions between The Utility Reform Network (TURN) and SoCalGas helped shape the utility's proposal for an interstate capacity acquisition process and our resolution of the issues. More specifically, we recognized that, had those meetings occurred in the context of, *e.g.*, post-filing settlement conferences, TURN's work would be compensable.<sup>13</sup> We believe that the arguments for compensability are similarly persuasive in this instance, and therefore will compensate CSBE for the hours it participated in or prepared for meetings/discussions with the utilities, Joint Staff and/or PAG members regarding on-bill financing issues from January through May, 2005.<sup>14</sup>

As discussed above, CSBE also claims hours for its contribution to the Commission's determination of EM&V-related issues. However, we find many of the listed hours relate to issues addressed in the draft and final decisions on administrative structure (D.05-01-055) and/or on the policy rules and threshold

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<sup>11</sup> See D.05-09-043, pp. 34-35.

<sup>12</sup> D.04-08-025, pp. 12-14, 20-21.

<sup>13</sup> D.05-05-046, pp. 7-8.

<sup>14</sup> Joint Staff refers to Energy Division and California Energy Commission staff assigned to energy efficiency proceedings at the Commission.

EM&V issues (D.05-04-051) in R.01-08-028. Again, CSBE had the opportunity to file timely requests for intervenor compensation for its contribution to decisions issued in the various phases of our rulemaking proceeding, but did not do so. We do not authorize compensation for these hours in today's decision.<sup>15</sup> We also do not authorize compensation for hours that refer to discussions or meetings regarding the utilities' rebate practices since, as discussed above, this issue is not addressed in D.05-09-043. We additionally do not authorize compensation for time CSBE spent generally reviewing EM&V-related documents that are available for public review and/or comment (such as the EM&V roadmap issued by Joint Staff, or the Database for Energy Efficiency Resources reports), or hours related to the San Francisco Peak Energy Program, which was not the subject of this proceeding.

Based on the breakdown of activities in CSBE's Request, it is difficult to assess the number of hours that do relate to its substantial contribution to EM&V issues in this proceeding. With regard to critical peak valuation, none of the hours designated as EM&V refer to this specific issue. However, CSBE does list under the OBF designation the hours that it spent in discussions, meetings and drafting comments on the Case Management Statement. Since CSBE submitted comments on the Case Management Statement that discuss critical peak valuation, as well as on-bill financing, we will authorize the hours relating to CSBE's contributions to both issues.

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<sup>15</sup> Nor do we authorize compensation for the preparation of the NOI in our rulemaking proceeding, for either Ryan or Hall.



Under the EM&V category, CSBE describes activities related to CFL savings beginning on March 5, 2004, when CSBE filed a Motion in R.01-08-028 for permission to conduct a survey and gather information regarding the 2003 Express Efficiency CFL program sites. The assigned ALJ denied the motion, but invited CSBE to join the advisory committee that was overseeing the EM&V activities of this program. CSBE appears to request compensation for all the hours associated with its acceptance of this invitation, i.e., its communication with other advisory committee members (including Energy Division staff) and review of the draft and final 2003 Express Efficiency reports, and associated meetings. However, voluntary participation on ad hoc EM&V technical committees is not an activity that the Commission has identified as compensable under the intervenor compensation statutes, nor did the assigned ALJ invite CSBE to join the 2003 EM&V review committee with that stated expectation.<sup>16</sup> Therefore, we do not authorize intervenor compensation for the hours associated with these activities.

Nonetheless, CSBE's informal discussions with the utilities and PAG members once the 2003 Express Efficiency report was finalized and circulated was part of the important pre-filing communication process that led to the

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<sup>16</sup> In fact, in discussing Energy Division's use of EM&V review committees in D.05-01-055, the Commission indicated that it expected there to be a pool of EM&V experts in California and other states who would be willing and able to periodically review written products and provide Energy Division with technical feedback at "very little or no cost" to ratepayers. The Commission clearly did not equate such participation with PAG participation, for which intervenor compensation could be sought. Compare the discussion in D.01-05-055 at p. 95 and at pp. 109-110. Nor did the Commission in previous energy efficiency decisions in this proceeding or in R.01-08028 establish that participation in the EM&V review committees for previous program year (e.g., 2003) activities represented work compensable under the intervenor compensation statute.

program plans ultimately filed by the utilities and adopted by the Commission in D.05-09-043. We rely on the precedent discussed above to authorize compensation for these pre-filing activities. Therefore, we include in today's award compensation for CSBE's time in March, April and May 2005, spent in discussions and meetings with the utilities and other interested parties regarding the updated CFL savings results.

Regarding preparation of the request, CSBE claims 10 hours for Hall's work, and another 70 hours for Ryan, consisting of 41 hours of "preparing documents/research" and 29 hours on "timesheets, preparing documents and filing the request" in November, 2005. In the context of today's findings regarding substantial contribution, and the number of hours authorized for Ryan's work related to EM&V and OBF in this proceeding, we find this number of hours excessive. We authorize half of the hours claimed for Ryan's work on the Request (35), and two hours for his work on NOI preparation.

### **A.2 Hours Claimed for Hall**

CSBE claims 44 hours for the work conducted by Hall in this docket (A.05-06-004 et al.), and an additional 55 hours for compensation related to his work in R.01-08-028.

Sixteen of the hours claimed for work in A.05-06-004 et al. are identified as activities related to Hall's preparation of intervenor compensation-related documents (i.e, reading D.05-09-043 and drafting the request). CSBE requests the full hourly rate for these hours, whereas it requests half the hourly rate for Ryan's work on these documents. Here, we authorize half the hourly rate for all the hours worked related to intervenor compensation-related documents by Ryan and Hall.

The remaining 28 hours claimed for Hall in A.05-06-004 et al. are described very generally (“read applications,” “draft comments” and “file comments”) and cannot be allocated to specific issues addressed by the Commission in D.05-09-043. Given the relatively low number of hours here, we give CSBE the benefit of the doubt that they represent work associated with on-bill financing, and as such, authorize compensation for those hours as part of CSBE’s substantial contribution to D.05-09-043. However, CSBE is put on notice that it must allocate the hours for all its policy experts to specific issues in any future requests for intervenor compensation.

With respect to the hours claimed for Hall’s work prior to the filing of the utility applications in this docket, we authorize compensation for 27 hours spent on the comments during the “green building initiatives” information-gathering effort conducted in R.01-08-028, consistent with our discussion in Section VI. A.1. However, CSBE also claims compensation for time spent by Hall on the Commission’s draft and final policy rules in R.01-08-028, as well as the preparation of CSBE’s NOI in that proceeding. For reasons discussed above, these hours are not authorized.

### **B. Market Rate Standard**

In determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. In D.05-11-031 we set forth principles to govern hourly rates for intervenors’ representatives for qualifying hours worked in calendar year 2005.

CSBE requests an hourly rate of \$175 each for work performed by Ryan and Hall in this proceeding. CSBE contends this rate for its policy experts are the same or less than the rates granted to other intervenors to this proceeding, with similar professional backgrounds.

In its request, CSBE presented a summary of the qualifications of Ryan and Hall. CSBE states that Ryan has been involved in energy efficiency program design and implementation for over 26 years. He served on the first team of Residential Energy Auditors authorized by Congress during the Carter Administration, and followed that experience by providing commercial and industrial energy audits for Massachusetts Electric while designing and building passive solar sunspaces in New England.

Ryan began his involvement with lighting in 1985, and by 1990 was the primary trade liaison for the Northeast Utilities Commercial/Industrial High Efficiency Lighting Program. In 1989, Ryan founded the Compact Fluorescent Association for the purpose of providing independent testing information to utilities and end users on that technology. From 2001-2003, he was Program and Technical Program Director for the City of San Francisco's Power Savers Small Business program. In 2003, Ryan served on the Energy End Use subcommittee of the Energy Future Coalition, a policy project. Ryan holds a B.S. in Sociology from Charter Oak College in Connecticut and attended law school at both the Quinnipiac College School of Law in Connecticut and Uppsala University in Sweden.

Hall holds a Master's Degree in Social Ecology from Goddard College. CSBE states he has worked locally, nationally and internationally on energy policy, planning and on internationally on energy policy, planning and sustainable energy implementation for over 25 years. Hall is now a consultant with CSBE and the Yolo Energy Efficiency Project in Davis, California. Hall's previous clients have included the Valley Energy Efficiency Corporation, BC Hydro and the California Energy Commission. From 1993-1997, Hall was the managing direction of the International Institute for Energy Conservation in

Latin America, and a member of the senior management team responsible for strategic planning, fundraising, development and budget management.

We have carefully reviewed the qualifications of Ryan and Hall, and have compared the hourly rates requested here with those of other intervenors with comparable or greater academic qualifications and similar or more experience, including consultants working with TURN, JBS Energy, Inc., and the Natural Resources Defense Council, among others.<sup>17</sup> Here, an hourly rate of \$140 for Ryan and Hall is reasonable, based on comparisons with other experts.

### **C. Productivity**

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

CSBE's contributions to this proceeding were directed primarily at refining the utilities' portfolio plans to include on-bill financing options and at improving the valuation of program benefits to ratepayers, and did not involve issues relating to specific dollar amounts, rates or funding levels. We therefore consider the issue of productivity in the context of the scope of the proceeding, as well as the magnitude of the intervenor's impact on the outcome.

Although many other issues were addressed in D.05-09-043, our review of the record and the Commission's decision indicate that the issues of on-bill financing, valuation of peak savings and expected useful measure lives were

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<sup>17</sup> See, for example, D.05-01-007, D.05-06-031 and D.05-06-053.

clearly matters of importance to the Commission in reviewing and approving the proposed portfolio plans. Although other parties also commented on some of the same issues, we find that CSBE provided a unique focus in its participation in this proceeding by representing the interests of California's small businesses in these matters. We are also persuaded by the documentation of CSBE's involvement in this proceeding that, for the hours we have authorized, CSBE took reasonable steps to ensure efficiency by working to complement and assist the showings of the other parties. In sum, we find that CSBE's contributions to this proceeding, though non-quantifiable, were substantial, and overall, we find CSBE's participation to be productive.

#### **D. Direct Expenses**

The itemized direct expenses submitted by CSBE total \$ 1,115.59, and include costs for postage, photocopying, and travel-related expenses (e.g., tolls, parking). CSBE's request for direct expenses includes \$42.32 in expenditures prior to January, 2005. We deduct these expenses from the total, to reflect today's determinations that CSBE's pre-2005 work did not contribute to the Commission's determinations in this proceeding. With that adjustment, we find that the direct expenses are commensurate with the work performed and are reasonable.

#### **VII. Award**

As set forth in the table below, we award CSBE \$ 37,210.71.

<b>Policy Experts:</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
<b>Ryan</b>			
EM&V	20.75	\$140	\$ 2,905.00
EM&V travel	6.75	70	472.50
OBF	132.50	140	18,550.00
OBF travel	40.00	70	2,800.00
Comp request	37.00	70	2,590.00
<b>Ryan Subtotal:</b>			<b>\$27,317.50</b>

<b>Hall</b>			
Review/draft comments	55.00	140	\$7,700.00
Comp request	16.00	70	1,120.00
<b>Hall Subtotal:</b>			<b>\$ 8,820.00</b>
<b>Expenses:</b>			<b>\$ 1,073.21</b>
<b>TOTAL AWARD:</b>			<b>\$37,210.71</b>

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on February 6, 2006, the 75th day after CSBE filed its compensation request, and continuing until full payment of the award is made.

We direct PG&E, SDG&E, SCE and SoCalGas to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for 2005, the year in which the work was performed.

We remind CSBE that Commission staff may audit their records related to this award and that CSBE must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. CSBE's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

### **VIII. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

### **IX. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner, and Meg Gottstein is the assigned ALJ in this proceeding.

**Findings of Fact**

1. CSBE has met all the procedural requirements necessary to claim compensation in this proceeding.
2. CSBE made a substantial contribution to D.05-09-043 as described herein.
3. CSBE has requested hourly rates and related expenses for experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the reasonable compensation is \$ 37,210.71.
5. The appendix to this opinion summarizes today's award.

**Conclusions of Law**

1. CSBE has fulfilled the requirements of Public Utilities Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation as adjusted herein, incurred in making a substantial contribution to D.05-09-043.
2. CSBE should be awarded \$ 37,210.71 for its contribution to D.05-09-043.
3. The comment period for should be waived, and today's order should be made effective immediately.

**O R D E R****IT IS ORDERED** that:

1. The Center for Small Business and the Environment (CSBE) is awarded \$37,210.71 as compensation for its substantial contribution to Decision 05-09-043.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall pay their respective shares of the award. Each utility's share shall be calculated based upon their



California-jurisdictional gas and electric revenues for the 2005 calendar year. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning February 6, 2006, the 75<sup>th</sup> day after CSBE filed its request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**Compensation Decision Summary Information**

<b>Compensation Decision:</b>		<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D05090943	
<b>Proceeding(s):</b>	A0506004, A0506011, A0506015, A0506016	
<b>Author:</b>	ALJ Gottstein	
<b>Payer(s):</b>	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric, Southern California Gas Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier ?</b>	<b>Reason Change/Disallowance</b>
Center for Small Business and the Environment	November 23, 2005	\$103,337.46	\$ 37,210.71	No	Hourly Rate levels, lack of substantial contribution in certain areas.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Hank	Ryan	Policy Expert	Center for Small Business and the Environment	\$175	2005	140
Stephen	Hall	Policy Expert	Center for Small Business and the Environment	\$175	2005	140